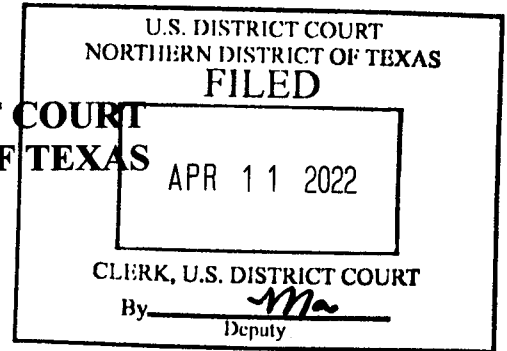


**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**



JOHN T. LAMONT and
PRESTON POULTER,

Plaintiffs,

v.

DEAN ASSAF A/K/A DA TALKS,
VICTORIA KUNDERT
A/K/A VIKKIVERSE,
Defendants.

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Civil Action No. 3:21-CV-1176-K

Judge Kinkeade

**DEFENDANT VICTORIA KUNDERT'S
MOTION TO VACATE DEFAULT**

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Defendant, Victoria C. Kundert (“Kundert”), proceeding pro se, moves that the Court vacate the entry of default by the clerk of the court on November 29, 2021, and deny as moot the pending motion for default judgment. Federal Rule of Civil Procedure 55(c), provides that the Court may set aside an entry of default for good cause. Fed. R. Civ. P. 55(c).

I. PLAINTIFFS FAILED TO SERVE IN TIME ALLOTTED.

Plaintiffs failed to serve Ms. Kundert properly and in the time allotted under Fed. R. Civ. Pro. 4(m). On May 28, 2021 a summons was issued by the clerk of the court for Defendant Kundert in this Action No. Dkt. 3. Plaintiffs were aware as late as August 4, 2021 when the unserved summons was entered into the record. Dkt. 17. The service at 512 Mariposa Drive NW, Albuquerque, New Mexico had not been affected because the address was improper, and the Plaintiffs had 17 calendar days to either obtain the proper address to serve Ms. Kundert or in the alternative file a motion for an extension of time or seeking permission to serve in an alternative manner.

The Court will set aside an entry of default or a default judgment for good cause or for one of the reasons listed in Rule 60(b)(1), which includes “mistake, inadvertence, surprise, or excusable neglect”. On October 21, 2021, 54 days after the unserved summons was entered into the record and 511 days after the summons was issued, Plaintiffs filed a Return of Service for a summons they claim to have served on Ms. Kundert. Dkt. 32. The summons was served at 7701 Warner Avenue, Apt. G122, Huntington Beach, CA not at the original New Mexico address on the summons. On November 29, 2021, the clerk of the court filed Clerk’s Entry of Default against Ms. Kundert. Dkt. 34. Council for the Plaintiffs has certified service of documents to Ms. Kundert to yet another address in California, 5895 Jensen Road, Castro Valley, CA, one that Ms. Kundert has no connection to. Dkt. 28, Dkt. 29, Dkt. 40. Under Fed. R. Civ. Pro. 4 (m) “if a

defendant is not served within 90 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time”.

II. DEFENDANT KUNDERT DOES NOT RESIDE AT THE ADDRESS THAT WAS SERVED

Defendant Kundert is a resident of Wallace, North Carolina. She has lived in North Carolina for 10 years and at her current address, 101 East Main Street, Wallace, North Carolina, since January 2019. Fed. R. Civ. Pro. 4(e)(2) lists the following requirements for service:

(2) doing any of the following:

- (A) delivering a copy of the summons and of the complaint to the individual personally;
- (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
- (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

The summons was served at an address in California, and not delivered to Ms. Kundert personally in North Carolina, nor was it left at her dwelling or with an authorized agent.

III. PLAINTIFF POULTER HAS KNOWLEDGE DEFENDANT KUNDERT DOES NOT LIVE IN CALIFORNIA

Plaintiff Poulter has knowledge of Ms. Kundert's status as a resident of North Carolina. Federal Rule of Civil Procedure 60(b)(3) permits a party to seek relief due to “fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party”. On Apr 16, 2020, Ms. Kundert appeared with Mr. Poulter on a live broadcast on Mr. Poulter's YouTube channel, Pocket Jacks Comics, the following exchange occurred:

POULTER: You grew up on the West Coast?

KUNDERT: Yes. I did.

POULTER: Ah, okay. But now you're on the east coast.

KUNDERT: Yes.

POULTER: Okay.

KUNDERT: Yeah, cross country. Actually I'm kind of glad I got out of California.

POULTER: I bet. You're like, I go back to L.A. It's just getting worse and now they've shut down the whole city.


On May 3, 2020, Plaintiff Poulter uploaded a video to his YouTube channel entitled "That Umbrella Guy Needs Your Support: #istandwithvikki" in which he discussed the release of Ms. Kundert's personal information on Twitter. Mr. Poulter and Ms. Kundert exchanged numerous telephone calls and text messages starting in July 2020. At the time of the exchanges, Ms. Kundert's phone number had a "910" North Carolina area code.. Ms. Kundert also backed several of Mr. Poulter's crowdfunding campaigns and used her mailing address in North Carolina. The final crowdfunding campaign of Mr. Poulter's that she backed, was Mr. Poulter's "Make 100: Guinevere and the Divinity Factory #3 Adult Cover" on the crowdfunding platform Kickstarter, which was mailed by Mr. Poulter to campaign backers, including Ms. Kundert, during September of 2020.

IV. CONCLUSION.

For the reasons above Defendant Victoria Kundert respectfully requests this Court vacate the default because of the Court's lacks personal jurisdiction due to Defendant Kundert not being properly served under Federal Rule of Civil Procedure 4(e)(2) and 4(m).

Date: April 5, 2022


Respectfully submitted,


Victoria Kundert
101 East Main Street
Wallace, North Carolina 28466
vckundert@gmail.com
(910) 619-7522

CERTIFICATE OF SERVICE

On April 5, 2022, I filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas. I hereby certify that I have served the forgoing document on all counsel an pro se parties of record in a manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Counsel for Plaintiffs:
Jeremy M. Masten
HAWASH CICACK & GASTON LLP
3401 Allen Parkway, Suite 200
Houston, Texas 77019



Victoria C Kundert

M. Sameer Ahmed
THE AHMED FIRM PLLC
8111 LBJ Freeway, Ste. 655
Dallas, Texas 75251

Pro se defendant:
Dean Assaf
1014 E. Alameda Street
Manteca, California 95336

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Civil Action No. 3:21-CV-1176-K

Judge Kinkeade

DECLARATION OF VICTORIA KUNDERT

I, Victoria Kundert, declare the following exhibits are true and correct copies.

1. **Exhibit 1** is a true and correct copy of a Declaration by Defendant Kundert's Landlord, Giles Tomkin.

2. **Exhibit 2** is a true and correct screenshot of the livestream broadcast April 16, 2020 on the YouTube channel Pocket Jacks Comics entitled "Refining the #Comicsgate Cringe with Vikkiverse" taken at the 1 hour 8 minute mark.

3. **Exhibit 3** is a true and correct screenshot of a video uploaded on May 3, 2020 to the YouTube channel Pocket Jacks Comics entitled "That Umbrella Guy Needs Your Support: [#istandwithvikki](#)"

4. **Exhibit 4** is a true and correct screenshots of text messages between Defendant Kundert and Plaintiff Poulter.

5. **Exhibit 5** is a true and correct copy of an email received by Defendant Kundert on August 8, 2020 confirming the backing of Plaintiff Poulter's Kickstarter Campaign "Make 100: Guinevere and the Divinity Factory #3 Adult Cover"

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 5th day of April 2022 at Wallace, NC USA.

A handwritten signature in black ink, appearing to read "Victoria Kundert", is written over a horizontal line.

Victoria Kundert

EXHIBIT 1 - Statement by Landlord

**IN THE UNITED STATES DISTRICT COURT
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Civil Action No. 3:21-CV-1176-K

Judge Kinkeade

DECLARATION OF GILES TOMKIN

Giles Tomkin, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The facts set out in herein are based on my personal knowledge.
2. I am a resident of Duplin County, North Carolina and reside at 215 Southeast Railroad Street Wallace, North Carolina.
3. I am secretary of a 501(c)(3) registered charitable organization named The Sanctuary Project EIN:43-1968020 whose purpose is to assist individuals in need.
4. Victoria Kundert has been and is a resident at the property of The Sanctuary Project in Duplin County, North Carolina located at 101 East Main Street, Wallace, North Carolina since January 9, 2019 until present.

I declare under perjury that the forgoing is true and correct.

Executed on April 5, 2022 in Wallace, NC, USA.

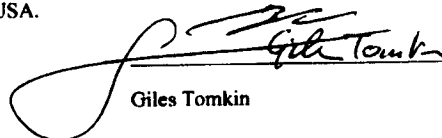

Giles Tomkin

EXHIBIT 2 - Screenshot of Pocket Jacks Comics Livestream.


YouTube Channel, Pocket Jacks Comics, 1 hr. 12. min livestream entitled, “Refining the #Comicsgate Cringe with Vikkiverse”. (Screen shot below taken at 1 hour 8 minutes.), originally streamed April 16, 2020. <<https://www.youtube.com/watch?v=bo3qssrd57A>>

☰ YouTube Search

Refining the #Comicsgate Cringe with Vikkiverse

1,329 views · Streamed live on Apr 16, 2020

👍 111 🗨 DISLIKE ➦ SHARE ➦ SAVE ...

 **Pocket Jacks Comics**
1.21K subscribers

We've drilled down into CG drama and have tapped into a gusher that is flying out with such velocity that we're trying to cap the well before we can have the drama refined and processed for consumption

You can see Vikki's interview with Ethan Van Sciver here:
<https://www.youtube.com/watch?v=yUyN>

You can purchase my exclusive covers of Guinevere and the Divinity Factory #2 or White Widow on Indiegogo:
<https://www.indiegogo.com/projects/wh...>

I encourage you to sign up for my Kickstarter for White Lily #5:
<https://www.kickstarter.com/projects/>

If you want to watch past Writer's Groups, here is the playlist:
<https://www.youtube.com/playlist?list...>

SHOW LESS

EXHIBIT 4 – Screenshot of Pocket Jacks Comics Video

YouTube Channel, Pocket Jacks Comics, 12 minute video entitled “That Umbrella Guy Needs


Your Support: [#istandwithvikki](#)”, uploaded to YouTube on May 3, 2020,

<<https://www.youtube.com/watch?v=7zjjERI8l0o>>, containing the description:

“That Umbrella Guy (TUG) recently revealed that he had the doxx on a critic of Ethan Van Sciver, Vikkiverse. Soon thereafter, Vikki's doxx was put forward in a Twitter account.”

YouTube

Search



That Umbrella Guy Needs Your Support: #istandwithvikki

2,134 views · May 3, 2020

144 DISLIKE SHARE SAVE ...

Pocket Jacks Comics
1.21K subscribers

That Umbrella Guy (TUG) recently revealed that he had the doxx on a critic of Ethan Van Sciver, Vikkiverse. Soon thereafter, Vikki's doxx was put forward in a Twitter account.

In addition, a new Twitter account has surfaced attacking the suicide of Krissey's mother again. Who could be behind this?

Well, on that, Ethan Van Sciver and I agree. It was TUG. He is getting ready to launch his sequel to The Case of the Littlest Umbrella, Part 2: Going from the Ethan-CG playbook, that means he has to do something provocative and monetize the outrage.

As such, here is a deep dive on the grifter who goes by the name: That Umbrella Guy.

Here is a link to Guinevere and the Divinity Factory and White Widow on Indiegogo:
<https://www.indiegogo.com/projects/wh>

Here is the link for my upcoming campaign for White Lily #3:
<https://www.kickstarter.com/projects/>

SHOW LESS

EXHIBIT 3 – Screenshots of Text Messages Between Defendant Kundert and Plaintiff Poulter

Screenshots of text messages between Defendant Kundert and Plaintiff Poulter between the dates of July 21, 2020 and August 2, 2020.

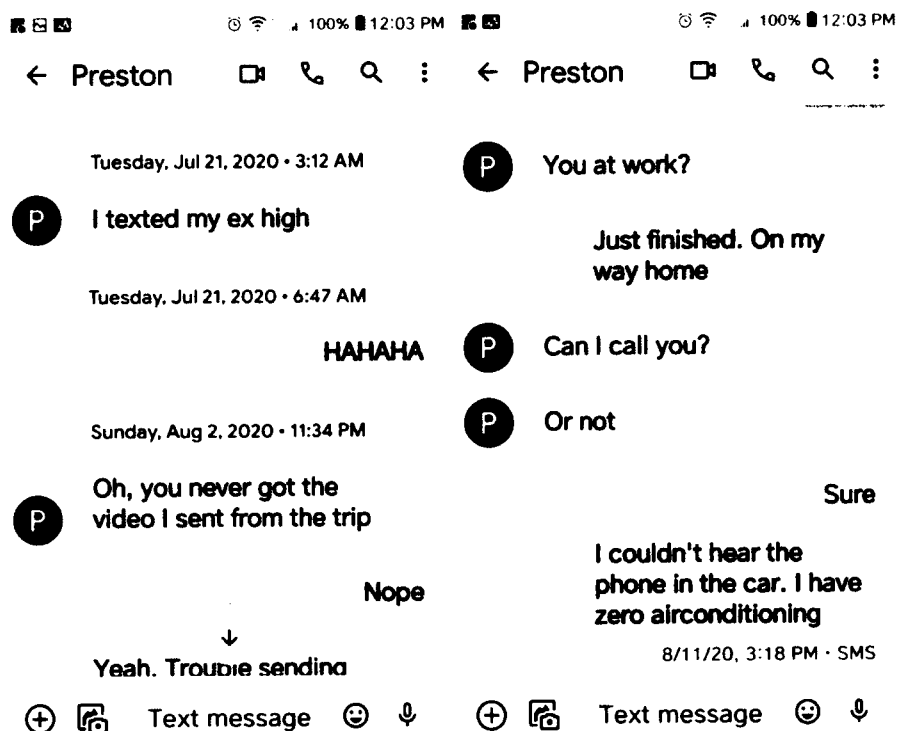


EXHIBIT 4 – Email Confirmation of Backing KickStarter Campaign

Email received on August 8, 2020 by Defendant Kundert confirming backing of Plaintiff Poulter's Kickstater crowdfunding campaign for Campaign "Make 100: Guinevere and the Divinity Factory #3 Adult Cover" containing a mailing address in Wallace, North Carolina.

4/4/22, 10:38 AM

Gmail - Survey Confirmation – Make 100: Guinevere and the Divinity Factory #3 Adult Cover



Vikkiverse <vikkiverse@gmail.com>

Survey Confirmation – Make 100: Guinevere and the Divinity Factory #3 Adult Cover

1 message

Preston Poulter <no-reply@s.backerkit.com>
To: vikkiverse@gmail.com

Sat, Aug 8, 2020 at 12:19 PM



Make 100: Guinevere and the Divinity Factory #3 Adult Cover

Created by Preston Poulter

Hi, Victoria Kundert!

Thank you for updating your pledge!

This email is your receipt.

[Learn how you can help!](#)

[Join the Community!](#)

[Have questions? Contact Us »](#)

Shipping Information

Victoria Kundert
120 East Main Street
c/o Cuts 4 Muttz
Wallace, NC 28466
United States of America
9102827111

[Update Your Address](#)

Balance

\$30.00 Pledge Level	\$30.00
Shipping Total	\$0.00

<https://mail.google.com/mail/u/0/?ik=3ef9797336&view=pt&search=all&permthid=thread-f%3A1674474790809118584&simpl=msg-f%3A1674474790809118584> 1/3

4/4/22, 10:38 AM

Gmail - Survey Confirmation - Make 100: Guinevere and the Divinity Factory #3 Adult Cover

Pledge Level	\$0.00
Pledged on Kickstarter	(\$30.00)
Credit Remaining	\$0.00

Pledge Summary

\$30 REWARD

Guinevere #3 Miss Sashi Adult Cover - FREE DOMESTIC SHIPPING The early release of issue 3. You get it before anyone else. Only 100 copies will be issues of the adult cover version of Miss Sashi's variant cover for Guinevere #3. In addition, you will get your name added to the Thank You page in the back of Guinevere and the Divinity Factory #3, main cover print edition. Note: If you want to add-on the other covers to your purchase, they are a flat \$25 each. Increase your base pledge by that amount for each of the other covers you want.

Pledge Questions

Your pledge includes a cover of the Miss Sashi, Make 100 Adult Cover of Guinevere and the Divinity Factory #3. Would you like that unmarked, autographed, or autographed and graded by CBCS.
Autographed

Your reward includes having your name on the Thank You page on the inside back cover. How would you like your name to appear?

I would like to appear on the Thank You page under the following name
Victoria Kundert

Thank you for your business. Your items have been added to your cart. On the next screen, you will be able to purchase additional products such as prints and back issues. Would you like the email address you used to be added to the Pocket Jacks newsletter so that you don't miss out on future crowd fund projects?

Got it. I don't wish to subscribe to the newsletter. Take to me see the add-ons.

Update Your Answers

What Happens Next?

- 1. Orders Locked**
Your order will be locked when the project is ready for manufacturing.
- 2. Shipping Addresses Locked**
Your shipping address will be locked when the project is ready for fulfillment.
- 3. Tracking Information**
You will be notified if a tracking number is available for your order.

Review on BackerKit

Use this link to return to your survey any time.

<https://mail.google.com/mail/u/0/?ik=3ef9797336&view=pt&search=all&permthid=thread-F%3A1674474790809118584&siml=msg-F%3A16744747908> 2/3

4/4/22, 10:38 AM

Gmail - Survey Confirmation - Make 100 Gunnevere and the Divinity Factory #3 Adult Cover

https://gunnevere3.backerkit.com/invites/oEKtkX...qGFukPoCWl...og/confirm?email=dmira2t2ZXJzZUBnbWVpbC5jb20%3D&redirect_path=%2Fbacker%2Freview&utm_medium=email&utm_source=order_confirmation

Feedback

The BackerKit team would love to hear from you!

Want to give feedback about your experience in crowdfunding to help make it better? Here's your chance

Take a 1-minute survey to help create a better experience for you »

*NOTE: This survey is unrelated to the responses provided in your pledge survey. BackerKit isn't a representative of Kickstarter, Indiegogo, or creator of this project. This survey is for research purposes only and in no way affects the delivery or submission of your pledge to any projects supported in BackerKit.

Check out our favorite live crowdfunding projects this week:

Discover Projects: BackerKit Staff Favorites

Have questions? Contact Us »

This project is using BackerKit surveys and pledge management software to stay organized and on schedule.

[BackerKit FAQs](#) | [Privacy Policy](#) | [Contact Us](#) | [Unsubscribe](#)

<https://mail.google.com/mail/u/0/?ik=3ef8797336&view=pt&search=all&permthid=thread-F%3A1674474790809118584&siml=msg-F%3A16744747908...> 3/3

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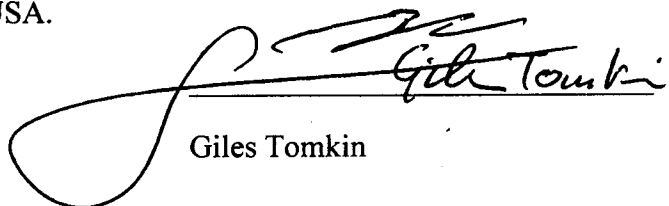
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1. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The facts set out in herein are based on my personal knowledge.
2. I am a resident of Duplin County, North Carolina and reside at 215 Southeast Railroad Street Wallace, North Carolina.
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4. Victoria Kundert has been and is a resident at the property of The Sanctuary Project in Duplin County, North Carolina located at 101 East Main Street, Wallace, North Carolina since January 9, 2019 until present.

I declare under perjury that the forgoing is true and correct.

Executed on April 5, 2022 in Wallace, NC, USA.


Giles Tomkin

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Civil Action No. 3:21-CV-1176-K

Judge Kinkeade

ORDER GRANTING DEFENDANT VICTORIA KUNDERT'S

MOTION TO VACATE JUDGMENT

Before the Court is Defendant Victoria Kundert's Motion to Vacate Judgment (the "Motion").

The Court, having considered the party's briefing and relevant law, hereby GRANTS the motion. It is therefore ORDERED that Defendant Victoria Kundert is hereby relieved of this Judgment under Fed. R. Proc. 55(c).

SIGNED on this _____ day of _____, 2022.

ED KINKEADE UNITED STATES DISTRICT

Victoria Kundert
101 East Main St
Wallace, NC 28466



11-22

United States District Court
Clerk of the Court
1100 Commerce Street, Rm. 1452
Dallas, TX 75242

